



2003 ASSEMBLY BILL 378

June 3, 2003 - Introduced by Representatives GOTTLIEB, JENSEN, GIELOW and GRONEMUS, cosponsored by Senators BROWN, COWLES, PANZER, M. MEYER and PLALE. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to renumber* 79.005 (1); *to amend* 79.005 (3), 79.04 (1) (intro.), 79.04
2 (1) (a), 79.04 (1) (b) 2., 79.04 (1) (c) 1., 79.04 (1) (c) 3., 79.04 (2) (a), 79.04 (2) (am)
3 2. and 79.04 (4); and *to create* 79.005 (1b), 79.005 (1d), 79.005 (1f), 79.005 (2m),
4 79.005 (4), 79.04 (3m), 79.04 (5), 79.04 (6), 79.04 (7) and 196.20 (7) of the
5 statutes; **relating to:** payments to local governments for public utilities.

Analysis by the Legislative Reference Bureau

Under current law, generally, the property of a public utility is subject to a state tax rather than local property taxes. Instead of collecting property taxes on public utility property, municipalities and counties receive payments from the shared revenue account based on the value of public utility property located in the municipalities and counties. The amount of a municipality's payment is equal to the value of public utility property located in the municipality, not exceeding \$125,000,000 for each utility, multiplied by either three mills, for a town, or six mills, for a city or village. However, the payment may not exceed an amount that is equal to \$300 multiplied by the municipality's population. The amount of a county's payment is equal to the value of public utility property located in each municipality within the county, not exceeding \$125,000,000 for each utility, multiplied by either three mills, for a city or village located within the county, or six mills, for a town located within the county. However, the amount of the county's payment may not exceed an amount that is equal to \$100 multiplied by the county's population.

Under this bill, for public utilities that begin operation before January 1, 2004, municipalities and counties in which such utilities are located will continue to

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receive payments from the shared revenue account as described above. Under the bill, beginning in 2005, the payments to municipalities and counties related to public utility production plants that begin operation after December 31, 2003, are paid from the public utility distribution account, which is created by the bill, instead of from the shared revenue account, and the amount of such payments is based on the megawatt capacity of all production plants located in the municipality and county, rather than on the value of the public utility property multiplied by the municipality's or county's mill rate. If a production plant is located in a city or village, the city or village in which the plant is located receives two-thirds of the amount of the payment determined by megawatt capacity, and the county in which the plant is located receives one-third of the amount of the payment determined by megawatt capacity. If a production plant is located in a town, the town in which the plant is located receives one-third of the amount of the payment determined by megawatt capacity, and the county in which the plant is located receives two-thirds of the amount of the payment determined by megawatt capacity. The total payment is equal to the production plant's megawatt capacity multiplied by \$2,000.

Under the bill, beginning in 2005, for production plants that begin operation after December, 31, 2003, each municipality and county in which a production plant is located will receive additional payments based on the megawatt capacity of a production plant located in the municipality or county, if the production plant meets any of the following criteria: 1) it is not a nuclear-powered production plant and it is built on the site of, or adjacent to, an existing or decommissioned production plant, on the site of, or adjacent to, brownfields, or on a site purchased by a public utility before January 1, 1980, and identified in an advance plan as a proposed production plant site; 2) it is a baseload electric generating facility; or 3) it is a production plant that derives energy from an alternative energy resource. The amount of the payment under this first and second criteria equals the production plant's megawatt capacity multiplied by \$600, and the amount of the payment under the third criterion is equal to the production plant's megawatt capacity multiplied by \$1,000.

Under current law, if public utility property is decommissioned and thereby subject to local property taxes, the municipalities and counties in which the property is located no longer receive shared revenue payments based on the value of that property. Under the bill, shared revenue payments related to decommissioned utility property are phased out over five years.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 79.005 (1) of the statutes is renumbered 79.005 (1m).

2 **SECTION 2.** 79.005 (1b) of the statutes is created to read:

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1 79.005 (1b) “Alternative energy resource” means a renewable resource, as
2 defined in s. 196.378 (1) (h); garbage, as defined in s. 289.01 (9); or
3 nonvegetation-based industrial, commercial, or household waste.

4 **SECTION 3.** 79.005 (1d) of the statutes is created to read:

5 79.005 (1d) “Baseload electric generating facility” means an electric
6 generating facility that has a capacity factor that is greater than 60%.

7 **SECTION 4.** 79.005 (1f) of the statutes is created to read:

8 79.005 (1f) “Capacity factor” means the actual annual output of an electric
9 generating facility expressed as a percentage of the facility’s potential output or, for
10 an electric generating facility that has not been in operation for one year, the
11 projected annual output of an electric generating facility expressed as a percentage
12 of the facility’s potential output.

13 **SECTION 5.** 79.005 (2m) of the statutes is created to read:

14 79.005 (2m) “Power generation unit” means a complete set of electric
15 generating equipment, as defined in s. 196.52 (9) (a) 1., that, collectively, is sufficient
16 to generate electric power.

17 **SECTION 6.** 79.005 (3) of the statutes is amended to read:

18 79.005 (3) “Production plant” ~~also includes~~ does not include substations and
19 general structures.

20 **SECTION 7.** 79.005 (4) of the statutes is created to read:

21 79.005 (4) “Repowered” means any of the following:

22 (a) Replacing the boiler on an existing fossil fuel steam unit with a combustion
23 turbine and heat recovery steam generator and reusing the steam turbine and heat
24 rejection system.

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1 (b) Adding a heat recovery steam generator to a simple cycle combustion
2 turbine.

3 (c) Demolishing or abandoning an existing power generation unit and replacing
4 it with a new power generation unit at the same site.

5 **SECTION 8.** 79.04 (1) (intro.) of the statutes is amended to read:

6 79.04 (1) (intro.) Annually, except for production plants that begin operation
7 after December 31, 2003, or begin operation as a repowered production plant after
8 December 31, 2003, the department of administration, upon certification by the
9 department of revenue, shall distribute to a municipality having within its
10 boundaries a production plant ~~or a general structure, including production plants~~
11 ~~and general structures under construction or substation~~, used by a light, heat, or
12 power company assessed under s. 76.28 (2) or 76.29 (2), except property described in
13 s. 66.0813 unless the production plant or substation is owned or operated by a local
14 governmental unit located outside of the municipality, or by an electric cooperative
15 assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company
16 under s. 66.0825 the amount determined as follows:

17 **SECTION 9.** 79.04 (1) (a) of the statutes is amended to read:

18 79.04 (1) (a) An amount from the shared revenue account determined by
19 multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village,
20 the first \$125,000,000 of the amount shown in the account, plus leased property, of
21 each public utility except qualified wholesale electric companies, as defined in s.
22 76.28 (1) (gm), on December 31 of the preceding year for ~~either "production plant,~~
23 ~~exclusive of land" and,~~ "general structures", ~~or "work in progress" for production~~
24 ~~plants and general structures under construction,~~ and "substations," in the case of
25 light, heat and power companies, electric cooperatives or municipal electric

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1 companies, for all property within a municipality in accordance with the system of
2 accounts established by the public service commission or rural electrification
3 administration, less depreciation thereon as determined by the department of
4 revenue and less the value of treatment plant and pollution abatement equipment,
5 as defined under s. 70.11 (21) (a), as determined by the department of revenue plus
6 an amount from the shared revenue account determined by multiplying by 3 mills
7 in the case of a town, and 6 mills in the case of a city or village, of the first
8 \$125,000,000 of the total original cost of production plant, general structures, and
9 ~~work-in-progress~~ substations less depreciation, land and approved waste treatment
10 facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm),
11 as reported to the department of revenue of all property within the municipality. The
12 total of amounts, as depreciated, from the accounts of all public utilities for the same
13 production plant is also limited to not more than \$125,000,000. The amount
14 distributable to a municipality under this subsection and sub. (6) in any year shall
15 not exceed \$300 times the population of the municipality.

16 **SECTION 10.** 79.04 (1) (b) 2. of the statutes is amended to read:

17 79.04 (1) (b) 2. When a light, heat or power company no longer uses property
18 described under par. (a) as production plant, substation, or general structure in a
19 municipality, the amount established under subd. 1. shall be reduced by the
20 proportion that the property that is no longer used bears to the total value of all
21 property described in par. (a) in the municipality. The proportion shall be determined
22 according to the proportional value of the property when the light, heat or power
23 company stops using the property.

24 **SECTION 11.** 79.04 (1) (c) 1. of the statutes is amended to read:

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1 79.04 (1) (c) 1. The payment for any municipality in which a production plant
2 is located, which the public service commission certifies to the department of revenue
3 will produce a nominal rated capacity of 200 megawatts or more, shall be no less than
4 \$75,000 annually, except that the amount distributable to a municipality in any year
5 shall not exceed the per capita limit specified in par. (a). ~~Payments under this~~
6 ~~paragraph may be extended to decommissioned production plants as provided in~~
7 ~~subd. 3.~~

8 **SECTION 12.** 79.04 (1) (c) 3. of the statutes is amended to read:

9 79.04 (1) (c) 3. If a production plant with a nominal rated capacity of 200
10 megawatts or more is decommissioned or becomes nonutility property, the \$75,000
11 minimum guaranteed payment under subd. 1. shall continue but diminish by \$7,500
12 annually, except that the minimum guaranteed payment under this subdivision
13 shall cease in the year following the first year in which the property becomes taxable
14 by the taxation district. In this subdivision, "nonutility property" has the meaning
15 set forth in the uniform system of accounts established by the public service
16 commission. This subdivision does not apply after the distributions in 2004.

17 **SECTION 13.** 79.04 (2) (a) of the statutes is amended to read:

18 79.04 (2) (a) Annually, except for production plants that begin operation after
19 December 31, 2003, or begin operation as a repowered production plant after
20 December 31, 2003, the department of administration, upon certification by the
21 department of revenue, shall distribute from the shared revenue account to any
22 county having within its boundaries a production plant ~~or a~~ general structure,
23 ~~including production plants and general structures under construction or~~
24 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
25 76.29 (2), except property described in s. 66.0813 unless the production plant or

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1 substation is owned or operated by a local governmental unit that is located outside
2 of the municipality in which the production plant or substation is located, or by an
3 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
4 municipal electric company under s. 66.0825 an amount determined by multiplying
5 by 6 mills in the case of property in a town and by 3 mills in the case of property in
6 a city or village the first \$125,000,000 of the amount shown in the account, plus
7 leased property, of each public utility except qualified wholesale electric companies,
8 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for either
9 “production plant, exclusive of land” and, “general structures”, or “work in progress”
10 for production plants and general structures under construction, ,” and
11 “substations,” in the case of light, heat and power companies, electric cooperatives
12 or municipal electric companies, for all property within the municipality in
13 accordance with the system of accounts established by the public service commission
14 or rural electrification administration, less depreciation thereon as determined by
15 the department of revenue and less the value of treatment plant and pollution
16 abatement equipment, as defined under s. 70.11 (21) (a), as determined by the
17 department of revenue plus an amount from the shared revenue account determined
18 by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of
19 property in a city or village, of the total original cost of production plant, general
20 structures, and ~~work-in-progress~~ substations less depreciation, land and approved
21 waste treatment facilities of each qualified wholesale electric company, as defined in
22 s. 76.28 (1) (gm), as reported to the department of revenue of all property within the
23 municipality. The total of amounts, as depreciated, from the accounts of all public
24 utilities for the same production plant is also limited to not more than \$125,000,000.

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1 The amount distributable to a county under this subsection and sub. (6) in any year
2 shall not exceed \$100 times the population of the county.

3 **SECTION 14.** 79.04 (2) (am) 2. of the statutes is amended to read:

4 79.04 (2) (am) 2. When a light, heat or power company no longer uses property
5 described under par. (a) as production plant, substation, or general structure in a
6 county, the amount established under subd. 1. shall be reduced by the proportion that
7 the property that is no longer used bears to the total value of all property described
8 in par. (a) in the county. The proportion shall be determined according to the
9 proportional value of the property when the light, heat or power company stops using
10 the property.

11 **SECTION 15.** 79.04 (3m) of the statutes is created to read:

12 79.04 (3m) For purposes of determining the amount of the payments under
13 subs. (1) and (2), the payments for a municipality and county in which an ash disposal
14 facility that is owned and operated by an electric cooperative is operating prior to the
15 effective date of this subsection ... [revisor inserts date], shall be calculated to
16 include an amount that is equal to the net book value of the ash disposal facility
17 multiplied by 2.

18 **SECTION 16.** 79.04 (4) of the statutes is amended to read:

19 79.04 (4) (a) Annually, in addition to the ~~amount~~ amounts distributed under
20 ~~sub. (1)~~ subs. (1), (5), (6), and (7), the department of administration shall distribute
21 \$50,000 to a municipality if spent nuclear fuel is stored within the municipality on
22 December 31 of the preceding year. If a spent nuclear fuel storage facility is located
23 within one mile of a municipality, that municipality shall receive \$10,000 annually
24 and the municipality where that storage facility is located shall receive \$40,000
25 annually.

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1 (b) Annually, in addition to the ~~amount~~ amounts distributed under sub. ~~(2)~~
2 subs. (2), (5), (6), and (7), the department of administration shall distribute \$50,000
3 to a county if spent nuclear fuel is stored within the county on December 31 of the
4 preceding year. If a spent nuclear fuel storage facility is located at a production plant
5 located in more than one county, the payment shall be apportioned according to the
6 formula under sub. (1) (c) 2., except that the formula, as it applies to municipalities
7 in that subdivision, applies to counties in this paragraph. The payment under this
8 paragraph may not be less than \$10,000 annually.

9 **SECTION 17.** 79.04 (5) of the statutes is created to read:

10 79.04 (5) (a) Beginning with the distributions in 2005, if property that was
11 exempt from the property tax under s. 70.112 (4) and that was used to generate power
12 by a light, heat, or power company, except property under s. 66.0813, unless the
13 production plant is owned or operated by a local governmental unit located outside
14 of the municipality, or by an electric cooperative, or by a municipal electric company
15 under s. 66.0825, is decommissioned, the municipality shall be paid, from the shared
16 revenue account, an amount calculated by subtracting an amount equal to the
17 property taxes paid for that property during the current year to the municipality for
18 its general operations from the following percentages of the payment that the
19 municipality received under this section during the last year that the property was
20 exempt from the property tax:

- 21 1. In the first year that the property is taxable, 100%.
- 22 2. In the 2nd year that the property is taxable, 80%.
- 23 3. In the 3rd year that the property is taxable, 60%.
- 24 4. In the 4th year that the property is taxable, 40%.
- 25 5. In the 5th year that the property is taxable, 20%.

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1 (b) Beginning with the distributions in 2005, if property that was exempt from
2 the property tax under s. 70.112 (4) and that was used to generate power by a light,
3 heat, or power company, except property under s. 66.0813, unless the production
4 plant is owned or operated by a local governmental unit located outside of the
5 municipality, or by an electric cooperative, or by a municipal electric company under
6 s. 66.0825, is decommissioned, the county shall be paid, from the shared revenue
7 account, an amount calculated by subtracting an amount equal to the property taxes
8 paid for that property during the current year to the county for its general operations
9 from the following percentages of the payment the county received under this section
10 during the last year that the property was exempt from the property tax:

- 11 1. In the first year that the property is taxable, 100%.
- 12 2. In the 2nd year that the property is taxable, 80%.
- 13 3. In the 3rd year that the property is taxable, 60%.
- 14 4. In the 4th year that the property is taxable, 40%.
- 15 5. In the 5th year that the property is taxable, 20%.

16 **SECTION 18.** 79.04 (6) of the statutes is created to read:

17 79.04 (6) (a) Annually, beginning in 2005, for production plants that begin
18 operation after December 31, 2003, or begin operation as a repowered production
19 plant after December 31, 2003, the department of administration, upon certification
20 by the department of revenue, shall distribute payments from the shared revenue
21 account, as determined under par. (b), to each municipality and county in which a
22 production plant is located, if the production plant has a name-plate capacity of at
23 least one megawatt and is used by a light, heat, or power company assessed under
24 s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813, unless the production
25 plant is owned or operated by a local governmental unit located outside of the

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1 municipality; by a qualified wholesale electric company, as defined in s. 76.28 (1)
2 (gm); by a wholesale merchant plant, as defined in s. 196.491 (1) (w); by an electric
3 cooperative assessed under ss. 76.07 and 76.48, respectively; or by a municipal
4 electric company under s. 66.0825.

5 (b) Subject to pars. (c) and (d), each municipality entitled to a payment under
6 par. (a) and each county in which such a municipality is located shall receive a
7 payment equal to a portion of an amount that is equal to the number of megawatts
8 that represents the production plant's name-plate capacity, multiplied by \$2,000.

9 (c) 1. If the production plant is located in a city or village, the city or village
10 receives a payment equal to two-thirds of the amount determined under par. (b) and
11 the county in which the city or village is located receives a payment equal to
12 one-third of the amount determined under par. (b). If the production plant is located
13 in a town, the town receives a payment equal to one-third of the amount determined
14 under par. (b), and the county in which the town is located receives a payment equal
15 to two-thirds of the amount determined under par. (b). If a municipality is located
16 in more than one county, the county in which the production plant is located shall
17 receive the county portion of the payment.

18 2. For the purpose of determining the amount of the payment under par. (b),
19 if a production plant is located in more than one municipality, the payment amount
20 under par. (b) shall be divided among the municipalities in which the plant is located
21 based on the net book value of that portion of the plant located in each municipality
22 as of December 31, 2004, or as of the date on which the plant is operational,
23 whichever is later.

24 (d) The total amount distributable to a municipality under this subsection and
25 sub. (1) in any fiscal year shall not exceed an amount equal to the municipality's

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1 population multiplied by \$300, and the total amount distributable to a county under
2 this subsection and sub. (2) in any year shall not exceed an amount equal to the
3 county's population multiplied by \$100.

4 **SECTION 19.** 79.04 (7) of the statutes is created to read:

5 79.04 (7) (a) Beginning with payments in 2005, if a production plant, as
6 described in sub. (6) (a), other than a nuclear-powered production plant, is built on
7 the site of, or on a site adjacent to, an existing or decommissioned production plant;
8 or is built on a site purchased by a public utility before January 1, 1980, that was
9 identified in an advance plan as a proposed site for a production plant; or is built on,
10 or on a site adjacent to, brownfields, as defined in s. 560.13 (1) (a), after December
11 31, 2003, and has a name-plate capacity of at least one megawatt, each municipality
12 and county in which such a production plant is located shall receive annually from
13 the shared revenue account a payment in an amount that is equal to the number of
14 megawatts that represents the production plant's name-plate capacity, multiplied
15 by \$600.

16 (b) Beginning with payments in 2005, if a production plant, as described in sub.
17 (6) (a), that is a baseload electric generating facility is built after December 31, 2003,
18 and has a name-plate capacity of at least 50 megawatts, each municipality and
19 county in which such a production plant is located shall receive annually from the
20 shared revenue account a payment in an amount that is equal to the number of
21 megawatts that represents the production plant's name-plate capacity, multiplied
22 by \$600.

23 (c) 1. Except as provided in subd. 2., beginning with payments in 2005, if a
24 production plant, as described in sub. (6) (a), that derives energy from an alternative
25 energy resource is built after December 31, 2003, and has a name-plate capacity of

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1 at least one megawatt, each municipality and county in which such a production
2 plant is located shall receive annually from the shared revenue account a payment
3 in an amount that is equal to the number of megawatts that represents the
4 production plant's name-plate capacity, multiplied by \$1,000.

5 2. If a production plant as described under subd. 1. fires an alternative energy
6 resource together with a fuel other than an alternative energy resource, the number
7 of megawatts used to calculate the payment under subd. 1. is the number of
8 megawatts that represents the production plant's name-plate capacity multiplied by
9 a percentage that represents the energy content of the alternative energy resource
10 in the year prior to the year in which the payment is made as compared to the total
11 energy content of the alternative energy resource and the other fuel in the year prior
12 to the year in which the payment is made.

13 **SECTION 20.** 196.20 (7) of the statutes is created to read:

14 196.20 (7) (a) In this subsection, "mitigation payment" means, as approved by
15 the commission, an unrestricted or recurring monetary payment to a local unit of
16 government in which an electric generating facility is located to mitigate the impact
17 of the electric generating facility on the local unit of government. "Mitigation
18 payment" does not include payments made or in-kind contributions for restricted
19 purposes to directly address health or safety impacts of the electric generating
20 facility on the local unit of government.

21 (b) Except as provided in par. (c), an electric public utility may not recover in
22 rates any of the following:

23 1. The cost of mitigation payments paid by the utility.

24 2. The cost of mitigation payments paid by the owner or operator of an electric
25 generating facility that the owner or operator recovers from the utility by selling

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1 electricity to the utility, by leasing the facility to the utility, or by any agreement
2 between the owner or operator of the electric generating facility and the public
3 utility.

4 (c) The commission shall only approve a mitigation payment agreement that
5 is received by the commission before June 1, 2003, and, if the commission finds the
6 agreement to be reasonable, shall not subsequently modify the agreement.

7 **SECTION 21. Initial applicability.**

8 (1) The treatment of sections 79.005 (1), (1b), (1d), (1f), (2m), (3), and (4) and
9 79.04 (1) (intro.), (a), (b) 2., and (c) 1., (2) (a) and (am) 2., (3m), (4), (5), (6), and (7) of
10 the statutes first applies to distributions made on the 4th Monday in July, 2005.

11 (END)